FAMILY FRIENDLY WORKPLACE ACT/Cloture

SUBJECT: **Family Friendly Workplace Act . . . S. 4. Lott motion to close debate.**

ACTION: CLOTURE MOTION REJECTED, 53-47

SYNOPSIS: As reported, S. 4, the Family Friendly Workplace Act, will amend the 1938 Fair Labor Standards Act (FLSA) to allow private sector employers and wage earners a choice of three flexible work arrangements: compensatory time off (time-and-a-half off) in lieu of monetary overtime pay; biweekly work schedules (the option to work 80 hours over a 2-week period in any combination); and a flexible credit-hour program (the choice to "bank" any hours over 40 in 1 week for use toward paid leave later). The use of any of these options will require the voluntary agreement of both the employer and the employee, and, if the employee is unionized, permission will be needed from a collective bargaining agreement. These flexible work arrangement options are currently allowed for government employees but are prohibited for private sector wage earners.

On May 13, 1997, Senator Lott sent to the desk, for himself and others, a motion to close debate on S. 4.

NOTE: The motion to close debate requires a three-fifths majority (60) vote of the Senate to succeed.

Those favoring the motion to invoke cloture contended:

In America, 66 million American workers enjoy flexible working arrangements; for the other 59.2 million American workers they are illegal. Under a Depression-era law, private sector hourly wage earners must be paid on a 40-hour-per-week basis, and receive time-and-a-half pay for any time worked over those 40 hours. They are allowed a little flexibility within those 40 hours, but most options that are enjoyed by other Americans are illegal for them. Back in the 1930s, when only 10 percent of women with children worked, and two-income families, and single parent families, were uncommon, this law did not create the great problems that it creates today. Now, though, wage earners are severely hurt by the fact that they often cannot get time off when they need to be with their children or to take care of personal matters. For most workers, it is usually much more important to be able to take off certain

(See other side)

YEAS (53)

Republicans (53 or 96%)		Democrats (0 or 0%)
Abraham	Hutchinson	
Allard	Hutchison	
Ashcroft	Inhofe	
Bennett	Jeffords	
Bond	Kempthorne	
Brownback	Kyl	
Burns	Lott	
Campbell	Lugar	
Chafee	Mack	
Coats	McCain	
Cochran	McConnell	
Collins	Murkowski	
Coverdell	Nickles	
Craig	Roberts	
DeWine	Roth	
Domenici	Santorum	
Enzi	Sessions	
Faircloth	Shelby	
Frist	Smith, Bob	
Gorton	Smith, Gordon	
Gramm	Snowe	
Grams	Stevens	
Grassley	Thomas	
Gregg	Thompson	
Hagel	Thurmond	
Hatch	Warner	
Helms		

NAYS (47)

Republicans (2 or 4%)	Democrats (45 or 100%)	
D'Amato	Akaka	Johnson
Specter	Baucus	Kennedy
	Biden	Kerrey
	Bingaman	Kerry
	Boxer	Kohl
	Breaux	Landrieu
	Bryan	Lautenberg
	Bumpers	Leahy
	Byrd	Levin
	Cleland	Lieberman
	Conrad	Mikulski
	Daschle	Moseley-Braun
	Dodd	Moynihan
	Dorgan	Murray
	Durbin	Reed
	Feingold	Reid
	Feinstein	Robb
	Ford	Rockefeller
	Glenn	Sarbanes
	Graham	Torricelli
	Harkin	Wellstone
	Hollings	Wyden
	Inouye	

NOT VOTING (0)

Republicans (0)	Democrats (0)

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

hours or days than it is to get overtime pay. For instance, a working mother (3 out of 4 mothers with school-age children now work) may need to build up comptime hours so she can go to parent-teacher conferences without using up her vacation days, or she may need every Friday afternoon off to take her daughter to soccer practice, or she and her husband may need to stagger their schedules to make certain that they will be able to take care of their kids and still spend some time together. In poll after poll, Americans, especially working women, have listed the need for having more flexible work schedules as their top need.

Many of our more liberal Democratic colleagues, though, oppose this bill because they know that business groups support it, and they think that anything that might help a business by definition has to hurt workers. As usual, our liberal colleagues are stuck in antiquity. They view workplace relations as a zero-sum game of workers versus management. It just seems to be beyond their ability to understand that it is possible for something to be good for both workers and businesses.

A few years ago, our colleagues and their union friends helped push through the type of changes we are asking for in this bill for Federal, State, and local hourly workers. The results have been hugely successful. Much of the language and options in this bill have been copied from those public sector bills. For instance, the language stating that workers may only take accrued comptime off when it is not going to cause unreasonable difficulties was taken straight from the Federal employee law. The main differences between those public sector laws and S. 4 is that S 4 contains many more protections for workers from coercion. For instance, this bill will let an employee convert accrued comptime hours to cash, it will not allow an employee's willingness to take comptime be a condition of employment, and it will not let an employer dictate when an employee may take comptime. These protections are missing for State and local government workers. Right down the line, from options to penalties, this bill will give private sector employees more rights and benefits than the laws our colleagues have championed for public sector employees.

Our colleagues who want so desperately to kill this bill have said they want to expand the Family and Medical Leave Act instead. When one considers how that Act has been working, it is hard to imagine a worse proposal. The Family and Medical Leave Act imposes a nightmare regulatory regime with severe penalties on employers if they do not let their workers take time off without pay for certain family or medical reasons. So far, according to the Commission that was set up to study how the law worked, 28 percent of those people who have exercised this wonderful "right" have had to borrow money to make ends meet, 42 percent have had to put off paying their bills, and more than 10 percent have had to go on welfare. Our colleagues were very careful in the Family and Medical Leave Bill to make certain that in no slight way did any business benefit, but we think the American people can do without more of this kind of right that drives them into debt and onto welfare.

When this law passes, the only workers in America who will not be allowed to have flexible work schedules will be union employees, because the law specifically states that they will only be allowed to have such schedules if their unions negotiate to allow them. Unions in America, which now represent only about a tenth of the private workforce, are the only unions in the world that still insist on having adversarial relations with employers, so they are not about to negotiate agreements on voluntary comptime. America's unions, and our colleagues, need to enter the modern world. They should start by dropping their filibuster of this bill, which will give American workers the chance to work out with their employers the flexible work schedules they need and deserve.

Those opposing the motion to invoke cloture contended:

We would love to let American workers have flexible work schedules. However, this bill will not make such schedules possible. Instead, it will take away the opportunity for poor working Americans to make ends meet by taking away the overtime pay on which so many of them rely. More than 80 percent of people who get overtime pay earn less than $28,000 per year; under this bill, those people will be out of luck. All one needs to do to understand that fact is to look at who is backing this bill (businesses) and who is opposing it (labor unions). The reason that employers love the bill and unions hate it is that it will give total effective control over scheduling to the employers. Our colleagues tell us that there are strong rules against coercion in the bill, but those laws will be unenforceable. The employer will have simply too strong a hand. It is fine to say as an academic matter that any option chosen will be voluntary for both the employer and the employee, but we all know that a single employer in any situation will have the upperhand because he will have many employees from whom to choose. The employer obviously will get exactly what he wants, and those workers who prefer any other options will be totally out of luck. Under this bill, if any employee wants to get any type of overtime or flextime, he or she is going to have to take it on the employer's terms.

During committee consideration of this bill we offered many amendments to take out the manifest flaws of this legislation, but they were all flatly rejected. Our colleagues who support this bill are determined to stake out an extremist position. The House bill is much more reasonable. It only contains comptime provisions--no provisions offering straight flex time or 80-hour, 2-week schedules are in it. That bill should be taken up by the Senate as a starting point for negotiations instead of S. 4. That bill, with modifications, at least bears some chance of being enacted. S. 4, on the other hand, is so bad that we cannot support any attempt to close debate. At a minimum, it must first be substantially amended.